



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AW/LDC/2022/0162**

HMCTS code : **P: PAPER REMOTE**

Property : **79-81 Onslow Gardens, London SW7
3BU**

Applicant : **The Wellcome Trust Limited**

Representative : **Savills (UK) Ltd (managing agents)**

Respondents : **1. Mrs CG Carlbom Ms C Carlbom & Mrs
PS Stevens (Flat 5)
2. J Edwards Esq & Lady AMC Maxwell
(Flat 8)
3. 25 RB Ltd (Flat A)
4. Ms Paola Rastelli (Flat B)
5. Carl Jacob Alistair Ehrenkrona
(Flat C)**

Type of application : **Dispensation with Consultation
Requirements under section 20ZA
Landlord and Tenant Act 1985**

Tribunal member : **Judge Robert Latham**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **7 December 2022**

DECISION

Decision

The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of the proposed works to install a plate heat exchanger to the outside of two calorifiers, which form part of the communal heating and hot water system.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The applicant has filed a bundle in support of the application.

The Application

1. By an application dated 3 August 2022, the Applicant seeks dispensation from the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 (“the Act”).
2. The application relates to proposed works to install a plate heat exchanger to the outside of two calorifiers, which form part of the communal heating and hot water system at 79-81 Onslow Gardens, London SW7 3BU. The purpose of these works is to ensure that the temperature output is sufficient. The estimated cost of the works is £4,710 including VAT.
3. In January 2022, a Water Risk Assessment Report identified that the calorifiers were not achieving a high enough temperature to kill Legionella bacteria in the water. Urgent remedial works were therefore instructed without lessees being consulted. Although it had been anticipated that the works would have been completed by the time this application was dealt with, supplier problems mean that the works have not yet been carried out.
4. The five flats affected by the application are those on long leases that contribute to the cost of the heating and hot water system. The total cost of £4,710 is to be divided equally between two service charge schedules, one for Flats 1-9 and one for Flats A-D, i.e. £2,355 per schedule. Those flats, the percentage contributions to their respective costs schedule and the predicted contributions to the total cost of works are set out below:

Flat	Percentage liability (for £2,355, being half the total cost)	Approximate liability
5	11.47%	£270.12
8	13.22%	£311.33
A	25%	£588.75
B	25%	£588.75
C	25%	£588.75

5. On 13 October 2022, the Tribunal issued Directions. The Tribunal stated that it would determine the application on the papers, unless any party requested an oral hearing. No party has done so.
6. By 25 October 2022, the Applicant was directed to send to each of the leaseholders by email, hand delivery or first-class post: (i) copies of the application form; (ii) a brief explanation for the reasons for the application; (iii) a copy of the Water Risk Assessment Report and (iii) a copy of the directions.
7. On 19 October 2022, the Applicant confirmed that it had complied with this Direction.
8. By 11 November 2022, any leaseholder who opposed the application was directed to complete a Reply Form which was attached to the Directions and email it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the applicant a statement in response to the application. No leaseholder has returned a completed Reply Form opposing the application.
9. The Applicant has emailed the tribunal a bundle of documents in support of their application. The bundle includes a copy of the lease for Flat B.
10. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”
11. **The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with**

the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

12. The Tribunal is satisfied that it is reasonable to grant dispensation from the statutory consultation requirements. Albeit that there has been some delay in executing the works, the Tribunal is satisfied that the works were considered to be urgent. There was therefore considered to be insufficient time to comply with the statutory consultation requirements. On 21 November 2022, the works had commenced, but had not been completed. There is no suggestion that any prejudice has arisen to any of the leaseholders by reason of the failure to follow the statutory consultation procedures. In the circumstances, it is appropriate to grant dispensation without any conditions.
13. The Directions make provision for the service of the Tribunal's decision. The Applicant is responsible for serving a copy of the Tribunal's decision on the relevant leaseholders.

Judge Robert Latham
7 December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made **by e-mail** to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).